

Draft Directive XXX

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Public Involvement

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1 Introduction

1.1 Purpose and Scope

This directive is part of a regulatory framework that seeks to ensure that members of the public are informed about proposed and existing energy resource developments and have the opportunity to provide input regarding those developments. This directive sets out requirements regarding

engaging and informing members of the public throughout the life cycle of an energy resource development, from preapplication to closure.

This directive casts a wide net in terms of who is to be engaged or informed about energy resource developments. This directive does not define or draw conclusions about who may or may not be directly and adversely affected by an energy resource activity. That is a matter of law and fact and is not circumscribed by this directive.

The requirements of this directive supplement the notice requirements and statement of concern process set out in the *Responsible Energy Development Act (REDA)* and the *Alberta Energy Regulator Rules of Practice*.

Unless otherwise directed by the Alberta Energy Regulator (AER), and subject to the exceptions listed in this directive, this directive applies to all AER-regulated energy resource activities and any specified enactment activities in respect of energy resource activities, and all proponents, applicants, or approval holders of those activities.

This directive does not address requirements related to obtaining consent for use of or access to land, which are addressed in legislation such as the *Public Lands Act*, the *Water Act*, and the *Surface Rights Act*.

In the event of conflict between this directive and any other requirements administered by the AER, contact the AER for further direction.

1.2 Definitions

For the purposes of this directive:

- a) “applicant” means a person who files an application with the AER;
- b) “approval” means any permit, licence, registration, authorization, disposition, certificate, allocation, declaration, or other instrument or form of approval, consent, or relief issued by the AER under an energy resource enactment or specified enactment;
- c) “closure” means the phase of the energy resource development lifecycle that involves the permanent end of infrastructure operation, and includes decommissioning, abandonment, remediation and reclamation;
- d) “construction” means the phase of the energy resource development life cycle that begins with a physical change to the landscape and extends to the creation of infrastructure;
- e) “energy resource activity” means:
 - i) an activity that may only be carried out under an approval issued under an energy resource enactment; or

- ii) an activity described in the regulations under *REDA* that is directly linked to (or incidental to) the carrying out of an activity that may only be carried out under an approval issued under an energy resource enactment;
- f) “energy resource development” means a related group of one or more proposed or existing energy resource activities, specified enactment activities in respect of the energy resource activities, and associated infrastructure, conducted by a proponent, applicant or approval holder in a specific area;
- g) “energy resource enactment” means:
 - i) the *Coal Conservation Act*;
 - ii) the *Gas Resources Preservation Act*;
 - iii) the *Oil and Gas Conservation Act*;
 - iv) the *Oil Sands Conservation Act*;
 - v) the *Pipeline Act*;
 - vi) the *Turner Valley Unit Operations Act*; or
 - vii) a regulation or rule under any of the above enactments;
- h) “engage” means to initiate two-way communications to provide information and the opportunity for thorough understanding and feedback, and includes follow-up responses;
- i) “Indian reserve” means a reserve as represented by the council of the band as defined in the *Indian Act* (Canada);
- j) “inform” means to provide information through one-way communications;
- k) “landowner” means:
 - i) the person in whose name a certificate of title has been issued pursuant to the *Land Titles Act*, or, if no certificate of title has been issued, the Crown or other body administering the land; or
 - ii) in the case of Métis land, the person registered in the Métis Settlements Land Registry as owner of the Métis title pursuant to the *Métis Settlements Land Registry Regulation*;
- l) “occupant” means:
 - i) a person other than the owner who is in actual possession of land;
 - ii) a person who is shown on a certificate of title or by contract as having an interest in the land that confers a right to occupy the land;

- iii) in the case of Métis land, a person having a right or interest in land recorded on the Métis title register pursuant to the *Métis Settlements Land Registry Regulation*; or
- iv) a person occupying a residence on a temporary or permanent basis;
- m) “operation” means the phase in the energy resource development life cycle that is associated with the use of infrastructure, excluding construction and closure;
- n) “proponent” means an entity that plans to submit, but has not yet submitted, an application for an energy resource activity or specified enactment activity that is part of an energy resource development;
- o) “public” includes landowners, occupants, approval holders, holders of an authorization under a specified enactment, municipal authorities, indigenous peoples, and other individuals, organizations, communities or groups;
- p) “public involvement” means the informing and engaging of the public by a proponent, applicant, or approval holder of an energy resource development, throughout the life cycle of the development;
- q) “public involvement area” refers to the geographical area within and surrounding an energy resource development, in which public involvement must be carried out under this directive;
- r) “specified enactment” means:
 - i) the *Environmental Protection and Enhancement Act*;
 - ii) the *Public Lands Act*;
 - iii) the *Water Act*; or
 - iv) a regulation under any of the above enactments; and
- s) “specified enactment activity” means an activity that may only be carried out under an approval issued by the AER under a specified enactment.

1.3 AER Requirements

Requirements are mandatory. The term “must” indicates a requirement. For ease of reference, requirements are numbered.

Recommended practices are included in *Manual XXX: Public Involvement*. The AER expects that recommended practices will be followed, but they are not required. However, failure to follow recommended practices may result in delays in the processing of applications or approvals, and may require the submission of additional information.

2 Public Involvement Area

- 1) A proponent, applicant, or approval holder must define the energy resource development for which public involvement will be required.
- 2) A proponent, applicant, or approval holder of an energy resource development must define an associated public involvement area.
- 3) At minimum, a public involvement area must include the following:
 - a) the legal subdivisions upon which any infrastructure necessary for the energy resource development is or will likely be located;
 - b) a 200 metre distance around any legal subdivisions identified under (a);
 - c) any emergency planning zones, as set out in *Directive 071*;
 - d) if *Directive 038* requires one or more noise impact assessments to be completed, the smallest of the following:
 - i) a 5 kilometre radius from any noise sources;
 - ii) any area that is expected to experience a noise contribution of 30 decibels absolute (dBA), as calculated by a model that meets the requirements of section 3.5.1 of *Directive 038*; or
 - iii) any area that is expected to experience a noise contribution of 30 dBA, as calculated by a model that meets the method described in section 3.5 of appendix 3 of *Directive 038*;
 - e) a 1.6 kilometre radius from any water well that is planned to be used to divert groundwater for the purposes of the energy resource development; and
 - f) any additional area as the AER directs in writing.

3 Application

3.1 Informing the Public of an Application

- 4) The proponent must prepare an application information package that includes, at minimum, the following items, in the order provided below:
 - a) the proponent's name and contact information, including a phone number and at least one other means by which members of the public can contact the proponent;
 - b) an emergency contact number for the proponent;
 - c) a summary of the energy resource development, including a description of
 - i) the nature and purpose of the energy resource development;

- ii) the existing and proposed energy resource activities, specified enactment activities, and associated infrastructure within the development; and
- iii) how the existing and proposed activities and infrastructure within the energy resource development are expected to be decommissioned, abandoned, remediated, and reclaimed;
- d) a summary of the proposed application, including the legislative provisions under which the application would be filed;
- e) maps that clearly illustrate the public involvement area and include
 - i) legal land descriptions;
 - ii) boundaries of the public involvement area;
 - iii) the location of all existing roads, wells, pipelines, facilities, in situ oil sands schemes, and mines, regardless of whether they are owned or operated by the proponent;
 - iv) the anticipated location of all of the proponent's proposed roads, wells, pipelines, facilities, in situ oil sands schemes, mines and associated infrastructure;
 - v) identification of any existing roads that are expected to be used in the energy resource development;
 - vi) the scale of each map;
 - vii) the date each map was prepared; and
 - viii) any other information as the AER directs in writing;
- f) a description of any setbacks that may affect land use or development;
- g) a summary of planned mitigation measures for potential air, biodiversity, community, land, and water effects arising from the proposed application;
- h) a summary of the air, biodiversity, community, land, and water effects that are expected to remain following the mitigation measures identified above, including discussion of both magnitude and duration;
- i) if *Directive 038* requires that one or more noise impacts assessments be completed,
 - i) a description of the duration and character of any noise that is expected as a result of the energy resource activities for which the noise impact assessment is required;
 - ii) a schedule of when the noise may be noticeable; and
 - iii) any noise mitigation measures that are planned for the energy resource development;
- j) an anticipated schedule, including

- i) submission of applications;
 - ii) receipt of required regulatory approvals;
 - iii) start and end of construction;
 - iv) start and end of operations; and
 - v) start and end of closure; and
- k) any other information as the AER directs in writing.
- 5) The application information package must provide sufficient detail to reasonably enable members of the public to assess whether the proposed energy resource activities, specified enactment activities, or associated infrastructure may affect them.
- 6) The proponent must distribute a copy of the application information package, in a manner acceptable to the AER, to all landowners, occupants, disposition holders, approval holders, holders of an authorization under a specified enactment, municipal authorities, and indigenous peoples within the public involvement area at least 30 days prior to submitting an application to the AER.
- a) Distributing a copy of the application information package to the Chief and Council of an Indian band, or delegate, satisfies the distribution of copies in relation to that Indian reserve.
 - b) Distributing a copy of the application information package to the Chair and Council of a Métis Settlement, or delegate, satisfies the distribution of copies in relation to that Métis Settlement.
- 7) Unless otherwise provided to the appropriate Chief, Chair, Council, or municipal authority, the proponent must distribute a copy of the application information package, in a manner acceptable to the AER, to any Indian reserve, Métis settlement, and municipal authority within 2000 metres from where the proposed energy resource activities are or are likely to be located.
- 8) The proponent must distribute a hard copy of the application information package if requested by
- a) a landowner, occupant, disposition holder, approval holder, holder of an authorization under a specified enactment, municipal authority, or indigenous person within the public involvement area or
 - b) an Indian reserve, Métis settlement, or municipal authority within 2000 metres from where the proposed energy resource activities are or are likely to be located.
- 9) The proponent must make the application information package available to any additional member of the public who requests it, within 10 days of receiving the request.

- 10) Where an application information package is being prepared for an application to amend an approval, to renew an approval, or for an addition to an existing energy resource development, the content of the application information package need only be specific to the proposed application.

3.2 Engaging the Public on an Application

- 11) At least 30 days before submitting an application to the AER, the proponent must engage with the following members of the public:
 - a) any landowners of any private land upon which infrastructure associated with the application may exist; and
 - b) any occupants of land upon which infrastructure associated with the application may exist.
- 12) Where directed by the AER in writing, the proponent or applicant must also engage with any other member of the public within any such timeframe as specified by the AER.
- 13) For the purposes of this directive:
 - a) engaging the Chief and Council of an Indian band, or delegate, satisfies requirements to engage in relation to that Indian reserve, and
 - b) engaging the Chair and Council of a Métis Settlement, or delegate, satisfies requirements to engage in relation to that Métis Settlement.
- 14) If, after reasonable efforts have been made, the proponent has been unable to engage with a member of the public, the proponent must inform that member of the public, before submitting the application, that reasonable efforts have been made to engage and that no further engagement under section 3.2 will be attempted.

4 Life Cycle Public Involvement

4.1 Public-Initiated Engagement

- 15) If any member of the public raises a question or concern directly with a proponent, applicant, or approval holder about their energy resource development at any point in the life cycle of the development, the proponent, applicant, or approval holder must respond, in a reasonable manner, no later than 30 days after the question or concern has been raised.
- 16) If a proponent, applicant, or approval holder has already responded to a particular member of the public about a question or concern they raised, the proponent, applicant, or approval holder may, instead of addressing the question or concern again, inform the member of the public in writing that a response has already been provided and that no further response will be provided on the question or concern.

- 17) If a member of the public has been informed that no further response will be provided on a particular question or concern, the proponent, applicant, or approval holder is not obliged to respond to further communications on that question or concern from that member of the public.

4.2 Regular Updates

- 18) A proponent, applicant, or approval holder must regularly inform all landowners, occupants, disposition holders, approval holders, holders of an authorization under a specified enactment, municipal authorities, and indigenous peoples within the public involvement area of the ongoing progress of the relevant energy resource development.
- 19) Regular updates must occur in a manner acceptable to the AER and, unless otherwise directed by the AER in writing, must occur at least once every 12 months.
- a) If no material changes have occurred during the previous 12 months, an approval holder that has commenced operations is not required to provide a regular update for the energy resource development, unless otherwise directed by the AER in writing.
- 20) Regular updates provided by proponents and applicants must include the following information:
- a) current contact information for the proponent or applicant;
- b) current emergency contact number for the proponent or applicant;
- c) the status of the application;
- d) a summary of any material changes to the information required in the application information package since the last regular update; and
- e) any other information as the AER directs in writing.
- 21) Regular updates provided by approval holders must include the following information:
- a) current contact information for the approval holder;
- b) current emergency contact number for the approval holder;
- c) an overview of any significant differences with respect to the energy resource development that have occurred since the last update;
- d) an updated schedule for the energy resource development;
- e) a summary of any incidents reportable to the AER since the last update;
- f) a summary of any AER enforcement actions that have occurred since the last update;
- g) a list of any upcoming approval expiry or renewal dates; and

- h) any other information as the AER directs in writing.
- 22) Proponents, applicants, and approval holders must make any previous regular update generated under this directive available to any member of the public who requests it, within 10 days of receiving the request.
- 23) For the purposes of section 4.2:
- a) informing the Chief and Council of an Indian band, or delegate, satisfies requirements to inform in relation to that Indian reserve; and
 - b) informing the Chair and Council of a Métis Settlement, or delegate, satisfies requirements to inform in relation to that Métis Settlement.

4.3 Industry-Initiated Public Involvement

- 24) A proponent or applicant must inform any members of the public within the public involvement area of any material changes or corrections to the information previously provided to those members of the public.
- 25) Where a public involvement area changes and a member of the public is no longer within the public involvement area, the proponent, applicant, or approval holder must
- a) inform that member of the public of the change within 12 months of the last regular update and
 - b) provide a rationale for the change.
- 26) Where a proponent, applicant, or approval holder changes, the new proponent, applicant, or approval holder must provide its contact information to all members of the public within the public involvement area defined by the previous applicant or approval holder, within 7 calendar days of the change taking effect.
- 27) Following an incident, an approval holder must inform any members of the public as the AER directs in writing.
- 28) For the purposes of section 4.3:
- a) informing the Chief and Council of an Indian band, or delegate, satisfies requirements to inform in relation to that Indian reserve; and
 - b) informing the Chair and Council of a Métis Settlement, or delegate, satisfies requirements to inform in relation to that Métis Settlement.

5 Exemptions

- 29) This directive does not apply to geophysical exploration activities as governed by Part 8 of the *Mines and Minerals Act*.

- 30) Sections 2, 3, 4.2, and 4.3 of this directive do not apply to the following applications or approvals:
- a) applications or approvals solely regulated by a code of practice under the *Environmental Protection and Enhancement Act*;
 - b) applications or approvals solely regulated by a code of practice under the *Water Act*;
 - c) applications or approvals solely concerned with the short-term diversion and use of water authorized by a temporary diversion licence under the *Water Act*; and
 - d) applications or approvals solely concerned with temporary, short-term activities on vacant public land, as identified in tables C and D of the *PLAR Approvals and Authorizations Administrative Procedures*, 2014, as amended.
- 31) An application for an amendment to or renewal of an approval does not require the public involvement activities set out in section 3 unless
- a) there is an expected increase in the magnitude or duration of an adverse effect on air, biodiversity, community, land, water, or noise;
 - b) the use of different or additional land is proposed; or
 - c) changes to any setback distances, as defined in *Directive 056*, are proposed.
- 32) An application for the addition of energy resource activities or specified enactment activities to an existing energy resource development does not require the public involvement activities set out in section 3 unless
- a) there is an expected increase in the magnitude or duration of an adverse effect on air, biodiversity, community, land, water, or noise;
 - b) the use of different or additional land is proposed; or
 - c) changes to any setback distances, as defined in *Directive 056*, are proposed.

6 Record Keeping

- 33) Proponents, applicants, and approval holders must keep complete and accurate records of the information required by this directive and of the public involvement undertaken pursuant to this directive, including:
- a) information supporting the definition of the energy resource development;
 - b) information supporting the definition of the public involvement area, including any calculations;
 - c) application information packages and regular updates;

- d) logs of public involvement activities, including:
 - i) who was engaged or informed;
 - ii) how, when, and what materials were provided; and
 - iii) any actions and outcomes that arose from the public involvement;
 - e) questions and concerns received from the public, and correspondence and responses provided to the public; and
 - f) any other information as the AER directs in writing.
- 34) Upon request by the AER, a proponent, applicant, or approval holder must produce any records required to be kept under this directive.

7 Implementation

- 35) Within 12 months of this directive coming into effect, or within 12 months of the AER issuing the relevant approval (whichever is later), approval holders must begin providing regular updates in accordance with section 4.2.
- 36) On the coming into effect of this directive, all applications that have already been submitted to the AER
- a) are not obliged to meet the requirements set out in this directive until a decision on the application has been made by the AER; and
 - b) must continue to operate in accordance with the participant involvement requirements applicable immediately prior to this directive coming into effect until a decision on the application has been made by the AER.
- 37) Where an application submitted to the AER before this directive comes into effect is withdrawn, closed, or denied, any resubmission of the application is subject to this directive.